

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1699**

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**Introduced by Assembly Member La Malfa**

February 23, 2007

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An act to amend Sections 4658 and 4658.5, 4658.5, and 4658.6 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1699, as amended, La Malfa. Workers' compensation: permanent disability: seasonal workers.

(1) Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law requires the payment of disability benefits to eligible individuals for injuries sustained in the course of employment that cause permanent disability, and specifies that the amount of those payments be computed in accordance with a prescribed formula. Existing law provides that if, within 60 days of an employee's disability becoming permanent and stationary, the employer does not offer the injured employee regular work, modified work, or alternative work, as specified, for a period of at least 12 months, the employer shall pay the employee an increased amount of permanent disability benefits.

This bill would also provide that, ~~for injuries occurring on or after January 1, 2008, on and after January 1, 2008, those provisions providing for the payment of an increased amount of permanent disability benefits shall not apply to an employer that employs fewer than 50 employees, or to an employee who, at the time of injury, was~~

employed in a seasonal position or in a position that was expected to last less than 12 months ~~shall not be eligible to receive these increased payments.~~

(2) Existing law requires the payment of certain supplemental job displacement benefits in the form of a nontransferable voucher for education-related retraining or skill enhancement, subject to certain exceptions, to an injured employee if the employee does not return to work for the employer within 60 days of the termination of temporary disability.

This bill would instead require the payment of those benefits if the injured employee does not return to work for the employer within 60 days of date the disability is determined to be permanent and stationary. ~~The bill would provide that, for injuries occurring on or after January 1, 2008, the employer shall not be liable for the payment of those supplemental job displacement benefits if, at the time of injury, the employee was employed in on and after January 1, 2008, the employer shall not be liable for the supplemental job displacement benefit if, at the time of the injury, the employee was employed in a seasonal position or in a position that was expected to last less than 12 months.~~

*Existing law also provides that the employer shall not be liable for the supplemental job displacement benefit if the employer meets specified conditions.*

*This bill would, instead, provide that, on and after January 1, 2008, the employer shall not be liable for the supplemental job displacement benefit if, within 60 days of the date that the disability is determined to be permanent and stationary, the employer offers the employee regular work, modified work, or alternative work, in the form and manner prescribed by the administrative director, for a period of at least 12 months, regardless of whether the employee accepts or rejects the offer of work.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 4658 of the Labor Code is amended to
- 2 read:
- 3 4658. (a) For injuries occurring prior to January 1, 1992, if
- 4 the injury causes permanent disability, the percentage of disability
- 5 to total disability shall be determined, and the disability payment

computed and allowed, according to paragraph (1). However, in no event shall the disability payment allowed be less than the disability payment computed according to paragraph (2).

(1)

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
Under 10.....	3
10–19.75.....	4
20–29.75.....	5
30–49.75.....	6
50–69.75.....	7
70–99.75.....	8

The number of weeks for which payments shall be allowed set forth in column 2 above based upon the percentage of permanent disability set forth in column 1 above shall be cumulative, and the number of benefit weeks shall increase with the severity of the disability. The following schedule is illustrative of the computation of the number of benefit weeks:

Column 1— Percentage of permanent disability incurred:	Column 2— Cumulative number of benefit weeks:
5.....	15.00
10.....	30.25
15.....	50.25
20.....	70.50
25.....	95.50
30.....	120.75
35.....	150.75
40.....	180.75
45.....	210.75
50.....	241.00

1	Column 1—	
2	Percentage	Column 2—
3	of permanent	Cumulative
4	disability	number of
5	incurred:	benefit weeks:
6	55.....	276.00
7	60.....	311.00
8	65.....	346.00
9	70.....	381.25
10	75.....	421.25
11	80.....	461.25
12	85.....	501.25
13	90.....	541.25
14	95.....	581.25
15	100.....	for life

(2) Two-thirds of the average weekly earnings for four weeks for each 1 percent of disability, where, for the purposes of this subdivision, the average weekly earnings shall be taken at not more than seventy-eight dollars and seventy-five cents (\$78.75).

(b) This subdivision shall apply to injuries occurring on or after January 1, 1992. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed, according to paragraph (1). However, in no event shall the disability payment allowed be less than the disability payment computed according to paragraph (2).

(1)

29		Column 2—Number of weeks
30		for which two-thirds of
31		average weekly earnings
32	Column 1—Range	allowed for each 1 percent
33	of percentage	of permanent disability
34	of permanent	within percentage range:
35	disability incurred:	
36	Under 10.....	3
37	10–19.75.....	4
38	20–24.75.....	5
39	25–29.75.....	6
40	30–49.75.....	7

Column 1—Range	Column 2—Number of weeks
for which two-thirds of	
average weekly earnings	
allowed for each 1 percent	
of permanent	
disability incurred:	of permanent disability
	within percentage range:
50–69.75.....	8
70–99.75.....	9

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(2) Two-thirds of the average weekly earnings for four weeks for each 1 percent of disability, where, for the purposes of this subdivision, the average weekly earnings shall be taken at not more than seventy-eight dollars and seventy-five cents (\$78.75).

(c) This subdivision shall apply to injuries occurring on or after January 1, 2004. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed as follows:

Column 1—Range	Column 2—Number of weeks
for which two-thirds of	
average weekly earnings	
allowed for each 1 percent	
of permanent	
disability incurred:	of permanent disability
	within percentage range:
Under 10.....	4
10–19.75.....	5
20–24.75.....	5
25–29.75.....	6
30–49.75.....	7
50–69.75.....	8
70–99.75.....	9

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(d) (1) This subdivision shall apply to injuries occurring on or after the effective date of the revised permanent disability schedule adopted by the administrative director pursuant to Section 4660. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the basic disability payment computed as follows:

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
0.25–9.75.....	3
10–14.75.....	4
15–24.75.....	5
25–29.75.....	6
30–49.75.....	7
50–69.75.....	8
70–99.75.....	16

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(2) (A) If, within 60 days of a disability becoming permanent and stationary, an employer does not offer the injured employee regular work, modified work, or alternative work, in the form and manner prescribed by the administrative director, for a period of at least 12 months, each disability payment remaining to be paid to the injured employee from the date of the end of the 60-day period shall be paid in accordance with paragraph (1) and increased by 15 percent. ~~For injuries occurring on and after January 1, 2008, an employee who, at the time of injury, was employed in a seasonal position or in a position that was expected to last less than 12 months shall not be eligible for payment under this paragraph. This paragraph shall not apply to an employer that employs fewer than 50 employees.~~

(B) *On and after January 1, 2008, this paragraph shall not apply to an employer that employs fewer than 50 employees, or to*

1 *an employee who, at the time of injury, was employed in a seasonal*  
2 *position that was expected to last less than 12 months.*

3 (3) (A) If, within 60 days of a disability becoming permanent  
4 and stationary, an employer offers the injured employee regular  
5 work, modified work, or alternative work, in the form and manner  
6 prescribed by the administrative director, for a period of at least  
7 12 months, and regardless of whether the injured employee accepts  
8 or rejects the offer, each disability payment remaining to be paid  
9 to the injured employee from the date the offer was made shall be  
10 paid in accordance with paragraph (1) and decreased by 15 percent.

11 (B) If the regular work, modified work, or alternative work is  
12 terminated by the employer before the end of the period for which  
13 disability payments are due the injured employee, the amount of  
14 each of the remaining disability payments shall be paid in  
15 accordance with paragraph (1) and increased by 15 percent. An  
16 employee who voluntarily terminates employment *or who is*  
17 *terminated for cause* shall not be eligible for payment under this  
18 subparagraph. ~~For injuries occurring on and after January 1, 2008,~~  
19 ~~an employee, who at the time of injury, was employed in a seasonal~~  
20 ~~position or in a position that was expected to last less than 12~~  
21 ~~months shall not be eligible for payment under this subparagraph.~~  
22 ~~This paragraph shall not apply to an employer that employs fewer~~  
23 ~~than 50 employees.~~

24 (C) *On and after January 1, 2008, this paragraph shall not*  
25 *apply to an employer that employs fewer than 50 employees, or to*  
26 *an employee who, at the time of injury, was employed in a seasonal*  
27 *position that was expected to last less than 12 months.*

28 (4) For compensable claims arising before April 30, 2004, the  
29 schedule provided in this subdivision shall not apply to the  
30 determination of permanent disabilities when there has been either  
31 a comprehensive medical-legal report or a report by a treating  
32 physician, indicating the existence of permanent disability, or when  
33 the employer is required to provide the notice required by Section  
34 4061 to the injured worker.

35 SEC. 2. Section 4658.5 of the Labor Code is amended to read:

36 4658.5. (a) Except as provided in Section 4658.6, if the injury  
37 causes permanent partial disability and the injured employee does  
38 not return to work for the employer within 60 days of the date that  
39 the disability is determined to be permanent and stationary, the  
40 injured employee shall be eligible for a supplemental job

1 displacement benefit in the form of a nontransferable voucher for  
2 education-related retraining or skill enhancement, or both, at  
3 state-approved or accredited schools, as follows:

4 (1) Up to four thousand dollars (\$4,000) for permanent partial  
5 disability awards of less than 15 percent.

6 (2) Up to six thousand dollars (\$6,000) for permanent partial  
7 disability awards between 15 and 25 percent.

8 (3) Up to eight thousand dollars (\$8,000) for permanent partial  
9 disability awards between 26 and 49 percent.

10 (4) Up to ten thousand dollars (\$10,000) for permanent partial  
11 disability awards between 50 and 99 percent.

12 (b) The voucher may be used for payment of tuition, fees, books,  
13 and other expenses required by the school for retraining or skill  
14 enhancement. No more than 10 percent of the voucher moneys  
15 may be used for vocational or return to work counseling. The  
16 administrative director shall adopt regulations governing the form  
17 of payment, direct reimbursement to the injured employee upon  
18 presentation to the employer of appropriate documentation and  
19 receipts, and any other matters necessary to the proper  
20 administration of the supplemental job displacement benefit.

21 (c) Within 10 days of the last payment of temporary disability,  
22 the employer shall provide to the employee, in the form and manner  
23 prescribed by the administrative director, information that provides  
24 notice of rights under this section. This notice shall be sent by  
25 certified mail.

26 ~~(d) The employer shall not be liable for the payment of~~  
27 ~~supplemental job displacement benefits if, at the time of injury,~~  
28 ~~the employee was employed in a seasonal position or in a position~~  
29 ~~that was expected to last less than 12 months. This subdivision~~  
30 ~~shall only apply to injuries occurring on and after January 1, 2008.~~

31 *(d) On and after January 1, 2008, the employer shall not be*  
32 *liable for the supplemental job displacement benefit if, at the time*  
33 *of injury, the employee was employed in a seasonal position or a*  
34 *position that was expected to last less than 12 months.*

35 (e) Except as provided in subdivision (d), this section shall apply  
36 to injuries occurring on or after January 1, 2004.

37 *SEC. 3. Section 4658.6 of the Labor Code is amended to read:*

38 *4658.6. ~~The~~ On and after January 1, 2008, the employer shall*  
39 *not be liable for the supplemental job displacement benefit if ~~the~~*  
40 *employer meets either of the following conditions: ~~, within 60 days~~*



1 *of the date that the disability is determined to be permanent and*  
2 *stationary, the employer offers the employee regular work, modified*  
3 *work, or alternative work, in the form and manner prescribed by*  
4 *the administrative director, for a period of at least 12 months,*  
5 *regardless of whether the employee accepts or rejects the offer of*  
6 *work.*

7 ~~(a) Within 30 days of the termination of temporary disability~~  
8 ~~indemnity payments, the employer offers, and the employee rejects,~~  
9 ~~or fails to accept, in the form and manner prescribed by the~~  
10 ~~administrative director, modified work, accommodating the~~  
11 ~~employee's work restrictions, lasting at least 12 months.~~

12 ~~(b) Within 30 days of the termination of temporary disability~~  
13 ~~indemnity payments, the employer offers, and the employee rejects,~~  
14 ~~or fails to accept, in the form and manner prescribed by the~~  
15 ~~administrative director, alternative work meeting all of the~~  
16 ~~following conditions:~~

17 ~~(1) The employee has the ability to perform the essential~~  
18 ~~functions of the job provided.~~

19 ~~(2) The job provided is in a regular position lasting at least 12~~  
20 ~~months.~~

21 ~~(3) The job provided offers wages and compensation that are~~  
22 ~~within 15 percent of those paid to the employee at the time of~~  
23 ~~injury.~~

24 ~~(4) The job is located within reasonable commuting distance of~~  
25 ~~the employee's residence at the time of injury.~~